IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3132 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NITABEN H SHAH

Versus

SARVJANIK EDUCATION SOCIETY

Appearance:

MR JD AJMERA for Petitioner

MR BB NAIK for Respondent No. 1

MR RM DESAI for Respondent No. 3

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 17/02/2001

ORAL JUDGEMENT

1. The petitioner challenges the order of the Gujarat Higher Secondary Tribunal made on 17-12-1987 in Application No. 60 of 1987 as well as the order made on 13-6-1988 in Review Application No. 15 of 1988, rejecting the petitioner's applications.

2. The petitioner was appointed as an Assistant Teacher by an order dated 5th August 1980, a copy of which is at Annexure `A' to the petition. In paragraph 2 of that order, it was stated that her appointment was purely temporary for the academic year 1980-81 only as she was untrained and that the temporary appointment was in the reserved seat meant for Schedule Caste / Schedule Tribe. The respondent school had two units, namely a secondary school and a higher secondary school. In the academic years 1986-87 and 1987-88, there were 26 classes in the secondary school, and as per the ratio allowed, there were 39 teachers. In the higher secondary school, prior to the academic year 1986-87, there were six classes, of which four were of general stream and two were of science stream. The higher secondary school had in all 13 teachers, including the petitioner and the respondents Nos. 5 to 10. In the academic year 1986-87, it was found that the general stream would not muster sufficient student strength, and therefore, one class was required to be reduced. A proposal was therefore sent to the District Education Officer by the management for reduction of one class and the District Education Officer, by his order dated 6-9-1986, permitted such reduction in the general stream. As per the Grant-In-Aid Rules, for the three classes of the general stream, eight teachers were allowed and for the two classes of the science stream, four. Thus, twelve teachers could be retained and the thirteenth was required to be declared surplus.

3. The District Education Officer, after hearing the school management as well as the present petitioner, gave permission for declaring the petitioner as surplus. This order was challenged by the petitioner on the ground that she was a higher secondary teacher and the power to give permission to relieve her vested in the Director of Higher Education, as per clause 14(1)(b) of the Gujarat Higher Secondary Schools Services Tribunal Act, 1983. The Tribunal accepted the challenge of the petitioner in Appeal No.3 of 1986 and by its order dated 18-12-1986, set aside the order of the District Education Officer, giving liberty to the respondent school to approach the Director of Higher Education for permission under section 14(1)(b) of the Act for relieving one excess teacher.

4. Thereafter, the Director of Higher Education heard the petitioner and other parties, who were likely to be affected, on 9-2-1987, and by his order dated 10-6-1987, held that, on the consideration of the factors of seniority and subject requirement, the petitioner was required to be declared surplus. The Director of Higher Education, therefore, granted permission under section 14(1)(b) of the said Act for declaring the petitioner as surplus. That order was challenged by the petitioner before the Tribunal in Appeal No. 2 of 1987, but the appeal was withdrawn by the petitioner, reserving her right to file a substantive application under section 8 of the Act, challenging the order that may be passed by the school pursuant to the permission granted by the Director. After the permission given by the Director, the District Education Officer, by his order dated 21st September 1987, absorbed the petitioner in another school in the city of Surat itself. The respondent school relieved the petitioner on 23-9-1986 to join that school where she was absorbed. That order was challenged by the petitioner before the Tribunal and the Tribunal, on the basis of the material on record, rejected the petitioner's application by a reasoned order.

5. It was contended on behalf of the petitioner that no hearing was given to the petitioner as contemplated by section 14(1)(a) of the Act by the management, and therefore, the order declaring her as surplus was null and void. It was further argued that the findings reached by the Tribunal were perverse and therefore, the order of the Tribunal was liable to be set aside.

6. The Tribunal has recorded in the impugned order that, in the earlier proceedings (Appeals No. 3 of 1986 and No. 2 of 1987), the petitioner did not press the contention that she was not given a reasonable opportunity of being heard under section 14(1)(a) of the Act by the school prior to obtaining permission under section 14(1)(b), and therefore, she should be considered to have waived such right. It was held that, if she had pressed the point, then while remanding the matter to the Director, the Tribunal would have rectified the error. It was further held that the petitioner was in fact given hearing by the District Education Officer on 14-8-1986 prior to the permission given by the Director under section 14(1)(b) in the context of reduction in the classes and her being affected thereon. It was held that the petitioner was not being dismissed for alleged misconduct, and therefore, no regular departmental inquiry was required to be held and the hearing before the District Education Officer's order dated 14-6-1986

was a sufficient compliance of section 14(1)(b) of the Act.

6.1 Under section 14(1)(b) of the said Act, it is provided that no employee shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges and the action proposed against him is approved by the Director of Higher Education; provided that nothing in this sub-section would apply to any employee who was appointed temporarily for a period of less than a year.

6.2 There were no charges which were required to be framed against the petitioner, because, there was no question of holding any departmental inquiry against her, and the only question was whether she would be rendered surplus due to reduction in the classes. The permission to reduce the classes was granted after hearing the parties concerned by the District Education Officer and the approval to declare the petitioner as surplus was granted by the Director of Higher Education after the matter was remanded by the Tribunal to him. The Director of Higher Education had given a hearing to the petitioner and other concerned parties on 9-2-1987 before making the order dated 10-6-1987 declaring the petitioner as surplus. There is therefore no violation of principles of natural justice and the provision of section 14(1) stood complied with, as rightly held by the Tribunal.

7. The contention that the findings of the Tribunal are perverse has no basis. The Tribunal has given cogent reasons for its finding that Shri Joshi and Shri Desai belonged to the higher secondary unit, and that therefore, there were 13 teachers in the higher secondary unit, of which one was required to be declared as surplus. The Tribunal rightly rejected the contention that the general stream and science stream should have been treated as separate units by observing that there was nothing in the Act which required different streams to be treated as separate entities for the purpose of the strength of teachers. The Tribunal noted that, in science stream, several subjects like English, Gujarati and even Sanskrit were taught, and in general stream, even mathematics was taught. Moreover, subjects of craft and P.T. were common to all the streams. Craft teacher was to be included in the ratio of general stream. The Tribunal found that there was one excess teacher in the general i.e. common stream as for three classes of

common stream, eight teachers were allowed. The contention of the petitioner challenging the status of the teacher Shri Joshi on the ground that he was upgraded in higher secondary unit at latter stage was rejected on the ground that he was not impleaded as a party though affected by such a contention. Even on merits, it was observed that Shri Joshi was appointed 20 years prior to the appointment of the petitioner and he was a senior most person, who was upgraded in the higher secondary unit with effect from the starting of that unit in 1977. It was observed that this part of the evidence was was not controverted or challenged by the petitioner in her deposition or in the cross examination of the Head Master. The Tribunal therefore found that Shri Joshi was senior to the petitioner. As regards the N.F.C. instructor absorbed in 1986, the Tribunal held that he was not only qualified teacher of physical education, which subject had admittedly 18 periods in higher secondary unit, and he was indispensable and could not be retrenched. While dealing with the contention of the petitioner that she was qualified in statistics, the Tribunal on the basis of the material on record found that two senior teachers were also qualified in statistics, and therefore, they could cope up with the work load of statistics and the petitioner being junior teacher cannot be considered indispensable for the subject of statistics.

6. The findings reached by the Tribunal are based on the evidence which was adduced before it and no extraneous factor has gone into its consideration. The findings are reasonable and warrant no different view at this stage in exercise of writ powers of this Court. The challenge against this findings on the ground that they are perverse, has no basis. The Tribunal has acted in lawful exercise of its jurisdiction and no ground is made out for interfering with the impugned decision. The petition is therefore rejected. Rule is discharged with no orders as to costs.

FEBRUARY 17, 2001 [R.K.ABICHANDANI, J.]

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